IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

MISC.CIVIL APPLICATION No 2394 of 2000

in

CIVIL APPLICATIONNo 282 of 2000

in

SPECIAL CIVIL APPLICATION NO. 10364 OF 1999

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE A.M.KAPADIA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SUO MOTU

Versus

SJ GAEKWAD REGISTRAR

Appearance:

SUO MOTU for Petitioner

MR PARESH UPADHYAY for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI
and

MR.JUSTICE A.M.KAPADIA

Date of decision: 19/01/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE R.K.ABICHANDANI)

1. These suo motu contempt proceedings arise from the order dated 27-12-2000 made by the learned Single Judge directing the Registry to register the notice as an application under the Contempt of Courts Act, 1972 against the respondent, who is the Registrar of this Court, on the ground that there was inaction on the part of the Registrar to comply with the directions issued by the learned Single Judge on 8th February 2000 in Civil Application No. 282 of 2000 which, prima facie, amounted to contempt of Court.

2. It appears that Special Civil Application No.10364 of 1999 was filed by the Director, Government Printing & Stationary Department, Gandhinagar and the Additional Chief Secretary, Industries & Mines Department, Gandhinagar, against one Mr.M.G.Parmar, challenging the judgement and order dated 30-11-1998 passed by the Gujarat Civil Services Tribunal in a group of appeals which included Appeal No.28 of 1998, setting aside the order dated 18-12-1997, by which the concerned employees were upgraded from Class IV to Class III posts, as a result of which, their dates of superannuation stood advanced by two years, and directing the authority that the order may be implemented with immediate effect.

2.1 It appears from the record that, on 27-12-1999, in the said writ petition which came up before the learned Single Judge, while issuing rule and notice as to interim relief which was made returnable on 7-2-2000, ad-interim relief was granted in terms of para 7[c] in which the petitioner - authorities had prayed for staying the execution and operation of the order dated 30-11-1998 in Appeal No.28 of 1998. It further appears from the record that, on 8-2-2000, the application made by the respondent - employee Mr.M.G.Parmar (Civil Application No. 282 of 2000) was heard alongwith another similar application (Civil Application No. 15385 of 1999) on the question as to whether the ad-interim relief should be vacated or not. In the present proceedings, we are concerned with the application which was made by the respondent - employee in Special Civil Application No. 10364 of 1999, which has been considered in para 7 of the order dated 8-2-2000. The grievance made before the learned Single Judge was that, though the respondent employee had lodged a Caveat on 29th November 1999

against any petition that may be preferred by the Government and copy thereof was served upon the concerned authorities, the respondent - employee was not given an advance copy of the petition, nor was his caveat notified before the Court and this had resulted in a severe prejudice to him as the Court made an order on 27th December 1999 granting ad-interim relief which adversely affected him without being given a hearing despite his Caveat. In view of the ad-interim stay of the order of the Tribunal, the respondent retired from service on 31st January 2000. The Court observed that, "the prejudice was caused on account of the negligence on the part of the concerned Officers, Advocates as well as the Registry". It was also observed that once a copy of Caveat was served upon the party concerned, it was the duty of that party to serve an advance copy of the petition upon the Caveator. Whether the Caveat has been lodged before the Court or not is hardly relevant, observed the Court. The learned Single Judge then proceeded to hold, "However, there is no reason why I should suppose that the said lapse has been made deliberately with malafide intention. I do not believe that the lapse has occurred for want of knowledge of practice and procedure. However, the same has caused serious prejudice to the Caveator. I am, therefore, of the view that the Caveator is required to be compensated for the prejudice caused to him." The petitioners were therefore directed to pay Rs.2,500=00 to the Caveator - respondent by way of damages.

2.3 In the context of the aforesaid lapses, the learned Single Judge, not being satisfied with the explanation of the clerk concerned and the action of warning given to him, observed in para 8 of the said order dated 8-2-2000 that, "Inaction has been explained away by saying that the concerned clerk was under heavy pressure of work and he lost sight of the Caveat. The concerned clerk has also conveyed his regret for the inconvenience caused to the Court. The Deputy Registrar concerned has also made a note that the concerned clerk is given warning and direction to be more careful in his work. I believe that the response of the Registry is absolutely indifferent and callous." The Court further observed that, prejudice was caused to the Caveator, that such lack of care results into multifarious litigations, that the Court has to hear the matter twice on the same subject matter, resulting into loss of judicial time and precious man-hours, and that the Court has to face an embarrassing situation. The following directions were therefore given to the Registrar, which have led to the present proceedings :-

"The Registrar is, therefore, directed to initiate action against the concerned clerk for not being diligent in performing his duties. The Registrar shall apprise this Court about the action initiated by him and processed further from time to time."

3. It appears from the record that, on 8-2-2000 itself, the learned Single Judge commenced the judgement in the said group of writ petitions, including Special Civil Application No.10364 of 1999 and on 9-2-2000, allowed the petitions filed by the Government authorities setting aside the judgement and order of the Tribunal in various appeals, including Appeal No. 28 of 1998, holding that these employees shall retire from service on attaining the age of 58 years. A copy of that judgement has been placed on the record by the learned counsel appearing for the present respondent.

4. Thereafter, on 27-12-2000, the learned Single Judge has directed to issue a notice for initiating contempt proceedings against the respondent - Registrar. In the said directions, after referring to the directions given on 8-2-2000, the learned Single Judge observed that, inspite of those directions, till the date 27-12-2000, the Registrar had not taken care to apprise the Court about the action initiated by him and the further proceedings. The learned Single Judge observed:

"Upon inquiry from the Registry, I have learnt that the proceeding directed to be initiated against the concerned clerk has not even commenced. To me, it appears that the Registrar does not have any regard for the judicial orders that are made by the Court in respect of the Registry. The inaction on the part of the Registrar to comply with the directions issued as far back as on 8th February 2000, prima facie, amounts to committing contempt of the court as envisaged under the Contempt of Courts Act, 1972."

This is how the matter has been placed before this Bench which is assigned the work of "Contempt Matters for Admission and Final Hearing" as per the List of Sitting commencing from 8-1-2001 to 11-3-2001 or till further orders.

5. The present respondent has filed affidavit in reply, in which while tendering his unconditional apology, he has pointed out that, pursuant to the orders of the High Court dated 8-2-2000, the then Registrar had assigned the matter to the then Joint Register (who is now the Registrar) on 21-2-2000 for holding a preliminary inquiry for fixing the responsibility of the concerned clerk for not showing the Caveat in Special Civil Application No.10364 of 1999. It is stated that, due to heavy pressure of work and administrative reasons, the said preliminary inquiry could not be undertaken by him. After his appointment as Registrar, he made an order on 12-9-2000 entrusting the preliminary inquiry to a Special Officer of the High Court, who submitted his report on 3-1-2000 wherein a clerk was found to be responsible for not showing the Caveat. On the basis of that report, a chargesheet has been served on the delinquent on 9-1-2001. The Registrar has stated that there was no intention on his part of not carrying out the directions given by the High Court on 8-2-2000. He has however tendered an apology for not reporting the matter to the Court as per the direction.

6. The learned counsel appearing for the respondent submitted that the Registrar had absolutely no intention of disobeying any directions of the High Court. He submitted that action was initiated as per the direction, and there was in fact no contempt committed. He however submitted that the learned Single Judge had initiated suo motu proceedings on 27-12-2000 by directing the Registrar to register the notice as an application under the Contempt of Courts Act, 1972 at a time when the work of contempt matters was not assigned to the learned Judge, and the learned Judge was assigned the work of Criminal Appeals for Final Hearing, in a Division Bench as per the roster reflected in the "List of Sitting commencing from 6-11-2000 to 28-12-2000", a copy of which is placed on record. It was further argued that initiation of departmental action against an employee of the High Court was a matter which was within the exclusive powers of the Chief Justice or his Nominee as contemplated by the provision of Article 229(1) of the Constitution of India. He submitted that a direction straightaway requiring a departmental inquiry to be initiated against an employee of the High Court had the effect of dispensing with the application of mind by the Chief Justice or his Nominee to the question as to whether the inquiry should be initiated or not. It also had the effect of making an inroad in the powers of Chief Justice conferred on him under Article 229 of the Constitution. It was submitted that the constitutional functions of the Chief Justice

cannot be interfered with or regulated in this manner.

6.1 In support of his contentions, the learned counsel relied upon the following decisions :

[a] High Court of Judicature for Rajasthan v/s Ramesh Chand Paliwal and another, reported in (1998) 3 SCC 72 was cited for its proposition that it was beyond the power of other Judges of the High Court to issue a direction under Article 226 to the Registrar to prepare a report regarding practicability of the posts in question being manned by the officers from the establishment of the High Court and to place the same before the Full Bench through the Chief Justice for taking a decision whether officers of the judicial services could be relieved of such posts in the High Court, for manning the district courts. The Supreme Court in para 26 of the judgement, after considering the scope of the provisions of Article 229 of the Constitution, held that the conferment of the power exclusively on the Chief Justice is necessary so that various Courts comprising of the judges sitting alone or in Division Bench etc., work in a coordinated manner and the jurisdiction of one court is not overlapped by other Court. It was observed:

> "If the Judges were free to choose their jurisdiction or any choice was given to them to do whatever case they may like to hear and decide, the machinery of the Court would collapse and the judicial functioning of the Court would cease by generation of internal strife on account of hankering for a particular jurisdiction or a particular case."

In para 30 of the judgement, it was emphatically held that even the Full Court cannot give a direction to the Chief Justice not to fill up those posts by bringing officers on deputation but to fill up those posts by promotion from amongst the High Court staff. It was observed:

"A Judge of the High Court individually or all the Judges sitting collectively, as in the Full Court, cannot either alter the constitutional provisions or the rules made by the Chief Justice. They have no jurisdiction even to suggest any constitutional amendment or amendment in the rules made by the Chief Justice nor can they create any avenue of promotion for the High Court staff so as to be appointed on posts meant for officers from the Rajasthan Higher Judicial Service or Rajasthan Judicial Service. The Chief Justice has been vested with wide powers to run the High Court administration independently so as not to brook any interference from any quarter, not even from his brother Judges who, however, can scrutinise his administrative action or order on the judicial side like the action of any other authority." (emphasis added).

It was held in para 31 of the judgement that, since power of appointment which vests absolutely in the Chief Justice cannot be exercised by any other Judge of the High Court, the latter, namely, other Judge or Judges, cannot exercise that power even indirectly as has been attempted to be done in that case. Referring to the constitutional scheme regarding the powers of the Chief Justice, the Supreme Court observed:

"As pointed out above, under the constitutional scheme, Chief Justice is the supreme authority and the other Judges, so far as officers and servants of the High Court are concerned, have no role to play on the administrative side. Some Judges, undoubtedly, will become Chief Justices in their own turn one day, but it is imperative under the constitutional discipline that they work in tranquillity. Judges have been described as "hermits". They have to live and behave like "hermits" who have

no desire or aspiration, having shed it through penance. Their mission is to supply light and not heat. This is necessary so that their latent desire to run the High Court administration may not sprout before time, at least, in some cases." (emphasis added)

[b] Mansukhlal Vithaldas Chauhan v/s State of Gujarat, reported in AIR 1997 SC 3400 was cited for the proposition that if the competent authority in whom the discretion is vested under the Statute, does not act independently and passes an order under the instructions and orders of another authority, the Court would intervene in the matter, quash the order and issue a mandamus to that authority to exercise its own discretion. This proposition was relied upon by the learned counsel in support of his contention that since the competent authority, who was the Chief Justice or his Nominee, had the power to decide as to whether the departmental proceedings should be initiated, a direction by the Court to that authority to initiate the proceedings had the effect of taking away the discretion vested in the authority under its constitutional powers.

[c] The decision in The High Court of Judicature at Bombay v/s Shashikant S. Patil and another, reported in AIR 2000 SCC 22 was cited for pointing out the proposition that when constitutional function was exercised by the administrative side of the High Court, any judicial review thereon could be made only with great care and circumspection, but confining strictly to the parameters set by the Apex Court in the decisions referred. It was held that, as per the judgement under appeal, the Division Bench of the Bombay High Court appeared to have snipped off the decision of the Disciplinary Committee of the High Court as if the Bench had appeal powers over the decision of five Judges on the administrative side. At any rate, the Division Bench had clearly exceeded its jurisdictional frontiers by interfering with such an order passed by the High Court on the administrative side.

[d] State of Rajasthan v/s Prakash Chand and others, reported in 1998(1) SCC 1, was cited for the proposition that the Judges can only do the work which was allotted to them by the Chief Justice or under his directions.

[e] Ajit D. Padival v/s State of Gujarat and others, reported in 39(2) GLR 1182, a decision of this Court, was cited for the proposition that the Chief Justice was the Master of Roster as held by the Supreme court and had a prerogative to constitute Benches and to allot work and no learned Single Judge can pick and choose any case or any matter for its disposal without appropriate orders of Chief Justice.

[f] State of Gujarat v/s Suo motu, reported in 2000(2) GLH 570, a decision of this Court, was cited for the proposition that it is a settled law that the Chief Justice is the Captain of the Team and the Master of the Roster and that, each and every Judge of the High Court has to take up only those cases assigned to him as per the roster and the sitting arrangements made by the Chief Justice.

7. It would be noted from the order dated 8-2-2000 that the learned Judge had directed the Registrar to initiate action against the concerned clerk for not being diligent in performing his duties. The learned Judge had also directed the Registrar to apprise her about the action initiated by him and processed further from time to time. The suo motu notice was issued on 27-12-2000 for contempt action against the Registrar on the ground that he had not taken care to apprise the Court about the action initiated by him and the further proceedings. The learned Single Judge had observed that inaction on the part of the Registrar to comply with the directions issued as far back as on 8th February 2000, prima facie, amounts to committing contempt of court as envisaged under the Contempt of Courts Act, 1972. In our view, the matter requires to be examined apart from the fact that the Registrar by the very nature of his position in the

Institution and the due traditional respect for the Courts that Registrars have, has expressed an apology which however does not warrant any assumption in the present case that he has committed contempt.

8. Under Article 229 of the Constitution, it is, inter alia, provided that the appointments of officers and servants of a High Court shall be made by the Chief Justice of the court or such other Judge or officer of the Court as he may direct. It is also provided that, subject to the provisions of any law made by the Legislature of the State, the conditions of service of officers and servants of a High Court shall be such as may be prescribed by rules made by the Chief justice of the Court or by some other Judge or officer of the Court authorised by the Chief justice to make rules for the purpose.

8.1 In exercise of the rule-making power conferred on the Chief Justice, the Chief Justice has framed the High Court of Gujarat (Recruitment & Conditions of Service of Staff) Rules, 1992. "Appointing Authority" is referred to in Rule 5 which reads as under :

"5. (i) All appointments to the posts in the office of the High Court shall be made by the Chief Justice in his absolute discretion.

Provided that the Chief Justice in exercise of the powers conferred upon him under Article 229 of the Constitution of India may by General or Special Order, direct any other person specified in the said Article to make appointments to any post or class of posts in the Court.

(ii) The Chief Justice in exercise of his powers under Article 229 of the Constitution of India is pleased to direct the Registrar to make appointments in the class of posts specified below subject to such conditions and limitations as may be prescribed in these Rules.

[a] All Class III Servants in the High Court.

[b] All Class IV Servants in the High

Court.

Provided that all such appointments shall be made by the Registrar with the previous approval of the Chief Justice." (emphasis added)

9. The word `appointment' in Article 229(1) of the Constitution is to be construed according to the axiom that the greater includes the less as warranted by Section 16 of the General Clauses Act which has been made applicable for interpretation of the Constitution by Article 367(1) thereof. The power of appointment conferred by Article 229(1) therefore includes the power of dismissal, removal, suspension, reduction in rank or compulsory retirement of an employee of the High Court.

9.1 The Constitutional Bench of the Supreme Court in Chief Justice of A.P. v/s L.V.A. Dixitulu, reported in (1979) 2 SCC 34 held, in the context of Article 229, that, in regard to the servants and officers of the High Court, Article 229 of the Constitution makes the power of appointment, dismissal, removal, suspension, reduction in rank, compulsory retirement etc., including the power to prescribe their conditions of service, the sole preserve of the Chief Justice, and no extraneous executive authority can interfere with the exercise of that power by the Chief Justice or his nominee, except to a very limited extent, indicated in the provisos to the Article. In conferring such exclusive and supreme powers on the Chief Justice, the object which the founding fathers had in view was to ensure the independence of the High Court.

9.2 Under Rule 55 of the Rules framed under Article 229 by the Chief Justice, all court employees shall be subject to the superintendence and control of the Chief Justice. Under Rule 57(1) of the Rules, subject to the provisions of Clause (2) of Article 311 of the Constitution, the Chief Justice shall have the powers to impose any of the penalties specified in Rule 56 on the Registrar or on any other Court servant. A detailed procedure for inquiry is laid down under the Rules.

9.3 The power to initiate disciplinary proceedings against any officer or other staff member of the High Court, thus constitutionally lies within the exclusive domain of the Chief Justice under Article 229. The Constitution treats `High Court' and `Chief Justice' as two separate entities inasmuch as "Control over

subordinate Courts" vests in the High Court under Article 235, but the High Court administration vests in the Chief Justice under Article 229. As held by the Supreme Court in M. Gurumoorthy v/s A.G. reported in (1971) 2 SCC 137, Article 229 contemplates full freedom to the Chief Justice of the High Court in the matter of appointments of officers and servants of the High Court. The unequivocal and obvious intention of the framers of the Constitution in enacting Article 229 is that in the matters of such appointments, it is the Chief Justice or his nominee who is to be the supreme authority and there can be no interference by the executive except to the limited extent provided in the Article itself. In the matter of appointments, even the Legislature cannot abridge or modify the powers conferred on the Chief Justice under Article 229(1). The power available to the Chief Justice of a High Court under Article 229 is akin to powers of the Chief Justice of India under Article 146 of the Constitution as held by the Supreme Court in High Court of Rajasthan v/s R.C.Paliwal [supra]. The Supreme Court also held that, the Chief Justice has been vested with wide powers to run the High Court administration independently so as not to brook any interference from any quarter, not even from his brother Judges who, however, can scrutinise his administrative action or order on the judicial side like the action of any other authority.

10. Under Article 229 of the Constitution, the Chief Justice may exercise the power himself or exercise it through such other Judge or officer (such as the Registrar) of the Court, as he may direct. Any direction to hold an inquiry against an officer or other member of the High Court staff would therefore essentially amount to exercise of powers under Article 229 and this can be done only by the Chief Justice or his Nominee. The power of the Chief Justice or his Nominee to take disciplinary action against officers and servants of the High Court cannot be curtailed by any interference from any quarter, not even from his brother Judges. Nor can there be a regular monitoring of any departmental action against an employee by the Court, because, that would amount to usurping the constitutional powers of the Chief Justice under Article 229, resulting in judicial arm-twisting of the Chief Justice and would constitute a serious inroad in the exclusive administrative powers of the Chief Justice. The initiation, nature, progress and outcome of disciplinary action against any officer or other employee of the High Court are the sole preserve of the Chief Justice. No contempt action can therefore be taken by this Court against any officer or other employee of the

High Court for any administrative lapse or inaction, for which a proper remedy would be of administrative reform by the Chief Justice or departmental action that may be taken by the Chief Justice in his wisdom under Article 229 of the Constitution.

11. In the present case, we are satisfied that there has not been any willful disobedience of any direction of the Court and we find that there is absolutely no warrant for taking action under the Contempt of Courts Act, 1972 against the Registrar or any other employee of the Registry on the grounds which were alleged in the notice. We therefore direct that the notice issued on the respondent be dropped, and the contempt proceedings stands withdrawn. This application stands disposed of accordingly.

PER : A.M.KAPADIA, J. :

12. Heard the erudite and lucid judgement dictated in Open court by my learned Brother Hon'ble Mr. Justice R.K. Abichandani and I entirely agree with the same. I would however like to reemphasize at the cost of repetition that if all Judges of the High Court while exercising powers under Article 226 of the Constitution start issuing instructions, writs or orders to the Registrar in relation to the High Court administration, to do a particular act or not to do a particular act, it would tantamount to interference in the exclusive domain of the Chief Justice envisaged under Article 229 of the Constitution, which empowers the Chief Justice alone to administer the High Court. If such powers are exercised under Article 226, the powers under Article 229 of the constitution would become nugatory and it would lead to an embarrassing situation for the Chief Justice in running the High Court administration resulting in a chaotic situation.

JANUARY 19, 2001 [R.K.ABICHANDANI, J.]

[A.M.KAPADIA, J.]

parmar*